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Paper Analyzes 'Public Nuisance' Ruling From Rhode Island Supreme Court

HOUSTON (LAWFUEL) – The scenario facing lead paint manufacturers in Rhode Island resembled the litigation nightmares of most American businesses. The defendants faced a state attorney general represented by contingent-fee lawyers. The plaintiffs' lawyers wielded a vague but public-spirited legal theory to which juries could readily relate. The "victims" described at trial were hundreds of homeowners, particularly in lower income areas. A jury in 2006 found the paint makers liable for a "public nuisance," but, as three attorneys discuss in a new Washington Legal Foundation Working Paper, the state Supreme Court vindicated the defendants' arguments.

The publication, "The Mouse Roars!: Rhode Island High Court Rejects Expansion of Public Nuisance," was authored for WLF by Thomas R. Bender, a partner in the Providence, R.I., firm of Hanson Curran LLP; and Richard O. Faulk and John S. Gray, partners in the Houston office of the law firm Gardere Wynne Sewell LLP. Mr. Bender served as local appellate counsel in the proceedings. Messrs. Faulk and Gray were counsel for the Public Nuisance Fairness Coalition and the Property Casualty Insurance Association of America as amicus curiae.

In March 2007, WLF published the paper "The Mouse that Roared?: Novel Public Nuisance Theory Runs Amok in Rhode Island." The paper, written by Messrs. Faulk and Gray, meticulously dissected the deep legal flaws in the Rhode Island trial court's ruling. The 2007 paper was a forerunner of a major law review article ("Alchemy in the Courtroom? The Transmutation of Public Nuisance Litigation," 2007 Mich. St. L. Rev. 941 [2007]), which was authored by Messrs. Faulk and Gray, and cited multiple times in the Rhode Island Court's opinion.

This new paper recounts the suit's path from its filing in 1999 to the state high court's ruling on July 1, 2008. It then explains the Court's reasons for rejecting the plaintiffs' legal theory. The authors stress that the holding was solidly based in judges' role as arbiters of the law, not as policymakers, and the state's obvious failure to establish the elements of a public nuisance violation. The authors entreat other courts faced with public nuisance lawsuits to embrace the Rhode Island high court's principles-based, persuasive approach to judging.

"The Mouse Roars!: Rhode Island High Court Rejects Expansion of Public Nuisance" is available online at http://www.wlf.org/upload/FinalBenderFaulkGray.pdf.
Printed copies of WLF WORKING PAPER, Number 157 (July 2008), can be obtained by forwarding a request to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036, or calling (202) 588-0302.